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December 1, 2008

REMARKS/ARGUMENTS

Claims 1-4, 6-8, 12 and 14-36 stand rejected and claims 5, 9-11 and 13 objected to in the outstanding Official Action. Claims 1-4, 6-8, 12, 14-30 have been cancelled without prejudice and claims 5, 9, 13, 31, 32 and 36 amended. Accordingly, claims 5, 9-11, 13, 32-34 and 36 are the only claims remaining in this application.

On page 2, sections 1-3 of the Final Rejection, claims 31-36 stand rejected under 35 USC §112 (first paragraph) as failing to comply with the written description requirement. Specifically, the Examiner suggests that in claim 31 "a computer readable storage medium containing compute readable instructions that when executed are operable to control a computer comprising" fails to comply with the written description requirement. It is noted that while claim 31 has been amended, the limitations thereof have been added to amended and now independent claim 36. It is noted that the format of claims 31 and 36 has been slightly amended to recite that the computer readable storage medium contains computer readable instructions that when executed are "operable to control a computer including a processor to include" the recited functional elements, i.e., "function logic for controlling said processor" and "disable interrupt logic for controlling said processor"

While it is not exactly clear what portion of claim 31 the Examiner believes to be unsupported in the specification, Applicants have amended independent claims 31 and 36 (which incorporates the subject matter of claim 31) to more clearly recite that the computer program product is stored on a computer readable storage medium which controls a computer which includes a processor (to cure any possible antecedent basis problem).

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Also, it is possible that the original language reciting a computer comprising "functional logic operable to control" and "disable interrupt logic operable to control" a processor was the basis for the Examiner's rejection. These limitations have been amended to recite the more conventional "functional logic for controlling" and "disable interrupt logic for controlling."

Additionally, it is also possible that the Examiner objects generally to the recitation of a "computer program product comprising a computer readable storage medium containing computer readable instructions . . ." as note being recited *in haec verba* in the specification. If this is the Examiner's objection, the Examiner is referred to the recently amended PTO policy regarding "computer program product claims" which are deemed acceptable if they are amended to recite a "computer readable storage medium" i.e., this amendment complies with the PTO imposed requirement of statutory subject matter.

It is also noted that PTO practice is that the recitation of a "computer program product" inherently includes the disclosure and support for a "computer readable storage medium" since all computer program products are indeed resident on a computer readable storage medium, whether it be tape, disk, etc. Computer program products not resident on a computer readable storage medium are not considered statutory subject matter.

If the Examiner's rejection to claim 31 is that the subject matter of claim 31 is not supported in the specification, the Examiner's attention is directed to Figure 18 in Applicants' specification and the description of the operation disclosed Figure 18 in the paragraph bridging pages 35 and 36. This paragraph discusses rearranging the code so that a first portion of the code has idempotence and then the code instructs the processor to disable interrupts once it is no longer possible to arrange the code to have idempotence. It is Applicants' position that the

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paragraph bridging pages 35 and 36 of Applicants' specification provides clear support to those of ordinary skill in the art for the subject matter specified in original claim 31, and now incorporated into independent claim 36 and any further rejection thereunder is respectfully traversed.

On page 14, sections 29 and 30 of the Official Action, the Examiner indicates that claims 5, 9-11 and 13 contain allowable subject matter and would be allowed if amended to read in independent form. This indication of allowable subject matter is very much appreciated and Applicants have rewritten claims 5, 9-11 and 13 so that claims 5, 9 and 13 are in independent form (claims 10 and 11 depend directly from claim 9). Accordingly, claims 5, 9-11 and 13 are believed to be allowable.

Claims 31 and 35 stand rejected on page 3, section 6, as anticipated under 35 USC §102(e) by Catherwood (USP 6,976,158). This rejection is respectfully traversed as all claimed structures are not present in the cited prior art reference. Original Claim 31 (and claim 35 dependent thereon) required "disable interrupt logic operable to control [and amended Claim 31 requires "disable interrupt logic for controlling"] said processor to disable interrupts . . ." (emphasis added).

The Examiner's statement on page 9, section 17 that "[o]nce an interrupt [is] complete then the interrupt is disabled and normal execution is resumes" appears to be interpreting the claim language to be the disabling of the interrupts. In fact, the claim language says just the opposite – "disable interrupt logic" is logic that does not allow an interrupt to be taken. This is clearly stated in the specification at page 35, second full paragraph which states "If an interrupt occurs during the processing of function C, the interrupts are not disabled so the interrupt is

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accepted and performed." Thus "disable interrupt logic" means exactly what the claim says - the interrupt is disabled - and does not mean that the interrupt is "completed" as suggested by the Examiner.

As a result of the above, it is clear that claim 31 and dependent claim 35 are not anticipated by the Catherwood reference and any further anticipation rejection of claims 31 or 35 is respectfully traversed.

The Examiner also notes in paragraph 30 of the Official Action that no art has been applied to claims 32-34 and 36 and that the only rejection with respect to these claims is the §112 rejection made to claim 31. Applicants believe the above amendment and/or argument responds completely to the rejection of claim 31, and the subject matter of claim 31 has been incorporated into now independent claim 36. Accordingly, claims 31-36 are all believed to also be allowable over the art of record and to be in complete compliance with 35 USC §112.

Entry of the Amendment Under Rule 116

Entry of the above amendment under the provisions of Rule 116 is respectfully requested. The amendment to now independent claims 5, 9 and 13 merely complies with the Examiner's indication of allowable subject matter in these claims and thereby obviates the need for an appeal to the Board of Patent Appeals and Interferences.

With respect to claims 32-34 and 36, the previous Official Action only included §101 rejections of these claims and therefore the newly added §112 rejection of claim 31 (also involving claims 32-34 and 36) has been newly added in the Final Rejection and therefore this is the first opportunity Applicants have had to respond to this new rejection. It is submitted that the

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amendments to now independent claims 31 and 36 obviate any need for appeal with respect to these claims.

The fact that the above amendments are believed to place claims 5, 9-11 and 13 as well as claims 31-36 in condition for allowance is believed to obviate any need to proceed with appeal on these claims. Moreover, the cancellation of claims 1-4, 6-8, 12, 14-30 cancels all other rejected claims, thereby obviating any need for appeal. Accordingly, entry of the above amendments involving claims 5, 9-11, 13, 31, 32 and 36 is respectfully requested.

Having responded to all objections and rejections set forth in the outstanding Official Action, it is submitted that claims 5, 9-11, 13 and 31-36 are in condition for allowance and notice to that effect is respectfully solicited. In the event the Examiner is of the opinion that a brief telephone or personal interview will facilitate allowance of one or more of the above claims, she is respectfully requested to contact Applicants' undersigned representative.

Inasmuch as this is Applicants' first Amendment after Final, the courtesy of a telephone call from the Examiner confirming PTO disposition of this Amendment is respectfully requested.

Respectfully submitted,

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